

Interpretation of T.C.A. § 3-6-305(3)
with respect to gifts given by a lobbyist or an employer
of a lobbyist to a candidate for public office, an official
in the legislative or executive branch, or immediate
family of such candidate or official for a non-business
purpose and motivated by a close personal friendship.

INTRODUCTION:

Pursuant to T.C.A. § 3-6-305(a)(1), with certain exceptions¹, “No employer of a lobbyist or a lobbyist may provide a gift, directly or indirectly, to a candidate for public office, official in the legislative branch, official in the executive branch, or immediate family of such candidate or official.” T.C.A. § 3-6-305(a)(2) reciprocally provides, “A candidate for public office, an official in the legislative branch, or an official in the executive branch, or the immediate family of such candidate or official may not solicit or accept directly or indirectly a gift from an employer of a lobbyist or a lobbyist.” This Opinion addresses only the exception contained in T.C.A. § 3-6-305(b)(3).

“Gift” is defined as “any payment, honorarium, subscription, loan, advance, forbearance, rendering or deposit of money or services, unless consideration of equal or greater value is received.” T.C.A. § 3-6-301(11). Violations of the gift prohibitions may result in civil penalties of up to ten thousand dollars (\$10,000). See T.C.A. § 3-6-306.

“Candidate for public office” means any individual who has made a formal announcement of candidacy or qualified under the law of this state to seek nomination for election or elections to any state public office, or has received contributions or made expenditures except for incidental expenditures to determine if one shall be a candidate, or has given consent for a campaign committee to receive contributions or make expenditures with a view to bringing about such person’s nomination for election or the election to state public office, and any individual who has been nominated for appointment as an official in the legislative or executive branch. T.C.A. § 3-6-301(6).

“Official in the executive branch” means the governor, any member of the governor’s staff, any member or employee of a state regulatory commission, including, without limitation, directors of the Tennessee Regulatory Authority, or any member or employee of any executive department or agency or other state body in the executive branch. T.C.A. § 3-6-301(19).

“Official in the legislative branch” means any member, member-elect, any staff person or employee of the general assembly or any member of a commission established by and responsible to the general assembly or either house thereof who takes legislative

¹ For a complete list of exceptions, see T.C.A. § 3-6-305(b)(1) – (11).

action. “Official in the legislative branch” also includes the secretary of state, treasurer, and comptroller of the treasury and any employee of such offices. T.C.A. § 3-6-301(20).

“Immediate family” means a spouse or minor child living in the household. T.C.A. § 3-6-301(12).

T.C.A. § 3-6-305(b)(3) provides an exception for “gifts that are given for a non-business purpose and motivated by a close personal friendship, but only to the extent such gifts are specifically defined and authorized by the rules of the ethics commission [Emphasis added]”.

The Commission is aware that close personal friendships have developed between lobbyists and employers of lobbyists, and candidates to public office, legislative and executive branch officials, and the immediate family of such candidates and officials and has received many questions about whether certain gift giving, which is motivated by such friendships, may be in potential violation of the Ethics Law.

The Commission is issuing this advisory opinion to provide guidance to lobbyists, employers of lobbyists, candidates for public office, legislative and executive branch officials, and the immediate family of such candidates and officials.

DISCUSSION:

The statute provides an exception for those gifts from lobbyists or employers of lobbyists to candidates for public office (“candidates”), legislative or executive branch officials (“public officials”), and immediate family of such candidates and public officials, which are: (1) given for a non-business purpose and (2) motivated by a close personal friendship. In assessing whether a gift meets these criteria, the Commission will take the following factors into consideration:

1. Whether the lobbyist or employer of a lobbyist is paying for or providing the gift out of his or her own personal funds or whether the gift is instead being charged to the lobbying firm or to the employer of the lobbyist, whether reimbursement is sought from the lobbying firm or the employer of a lobbyist, or whether the cost of the gift is taken as a business deduction by the lobbyist or employer. A gift that is expensed or reimbursed to the lobbying firm or the employer of the lobbyist, or for which a business deduction is taken, will be presumed to be a gift provided for a business purpose.
2. Whether there has been a history of gift giving between the lobbyist or the employer of a lobbyist and the candidate, public official, or their immediate family as well as the nature of the gift giving. The longer the practice, the more likely the gift giving is for a non-business

purpose and a result of a close personal friendship. In addition, if the gift giving began prior to the candidate or public official obtaining their status as a candidate or public official, and the pattern of gift giving remains consistent, then there is greater likelihood that the gift was a result of a close personal friendship rather than for a business purpose.

3. Whether the candidate or public official, or immediate family member has reciprocated with a gift to the lobbyist or the employer of the lobbyist in the past, and has reciprocation been provided of similar value. The presence of reciprocal gift of an equal value would indicate the existence of a non-business purpose and a close personal friendship.
4. Whether the lobbyist or the employer of the lobbyist provides the same or similar items to other candidates, public officials, or the immediate family of such candidates or public officials at the same time. If similar gifts are provided to other candidates or public officials, it tends to negate that the gift is provided based on a close personal friendship and supports that it is for a business purpose.
5. Whether the timing and circumstances of the gift is appropriate. When a lobbyist or an employer of a lobbyist has a matter currently before or will shortly be before a public official, a gift to such official is more likely to be construed as motivated by a business purpose.
6. In the case of an individual who works for an employer of a lobbyist and is providing the gift, whether the individual is involved in lobbying activities on behalf of the employer of a lobbyist.

As in all gift situations, a candidate, public official or a member of their immediate family, to overcome any uncertainty as to the legality or the appropriateness of the gift from a lobbyist or an employer of a lobbyist, has the option of paying the lobbyist or employer of the lobbyist the fair market value of the gift or, in the case of certain gifts, paying for the gift directly.

CONCLUSION:

Tom Garland,

Chair

R. Larry Brown

Linda W. Knight

Donald J. Hall

Dianne F. Neal

Benjamin S. Purser, Jr.,

Commissioners

Date: April 24, 2007